

Serial No. 09/904,794

REMARKS

It is respectfully requested that French et al. (6,284,294) utilized in the rejection of claim 31 be listed on Form PTO-892 so that consideration thereof is indicated on the face of the issued patent based upon the above application.

Claim 31 has been incorporated into claim 21 as originally filed. The Examiner recognized that Friedman does not suggest a duct in the supply tube at an acute angle upstream of the supply tube. Likewise, Examiner Weinstein in the IPER of the corresponding PCT application indicated that the "art of record [including Mannara] taken as a whole or singly does not suggest a duct in the supply tube extending at an acute angle"(material in brackets added).

Kinney (4,136,720) discloses a product insert 51 including dividers 52, 53, 54 which divide constituent conduit 46 into 3 areas and having diverter blades 72, 73, 74 located near the downstream extremity of an opening to cause product constituent to flow through the opening into the adjacent stream. Thus, Kinney does not suggest a supply tube extending into the fill tube and having a free end inside of the fill tube. Thus, it is respectfully submitted that person skilled in the art would be suggested to replace the injection nozzle 50 of Friedman with the product insert 51 of Kinney as there is no suggestion that its openings and diverter blades 72, 73, 74 could be utilized in any other structure than disclosed. Additionally, even if somehow combined, Kinney does not disclose that its openings (which are contended to correspond to the recited ducts) could be angled and the flow direction created by diverters 72, 73 and 74 would extend at an obtuse angle (i.e., would extend downstream and not upstream). Thus, for each of these separate and independent reasons, Kinney alone or in combination with any other prior art would not suggest the recitations of claim 31 as previously amended.

Gundlach is commonly assigned as Friedman and discloses an injection nozzle 107 of the same type as Friedman except having a closed end 111. The Examiner does not appear to rely upon Gundlach in any manner to modify Friedman, and it is respectfully requested that the Examiner identify what teachings of Gundlach are being utilized to modify Friedman. It is respectfully submitted that Gundlach is deficient for the same and similar reasons as previously recognized for Friedman. Thus, for each of these separate and independent reasons, Gundlach alone or in combination with any other prior art would not suggest the recitations of claim 31 as previously amended.

Serial No. 09/904,794

Similarly, the Examiner does not appear to rely upon French in any manner to modify Friedman, and it is respectfully requested that the Examiner identify what teachings of French are being utilized to modify Friedman. Further, French disclosed spindle 8 with a single nozzle 9 (figure. 4) at an obtuse angle or dual nozzles 22 and 23 which appear to extend at a perpendicular angle. Additionally, French does not suggest that its entry points would be in the form of ducts in a manner as recited in claim 31 as previously amended. Thus, for each of these separate and independent reasons, French alone or in combination with any other prior art would not suggest the recitations of claim 31 as previously amended.

Mannara disclosed an inner tubular casing which is slotted for admitting streams of a second paste. Thus, Mannara does not suggest a supply tube extending into the fill tube and having a free end inside of the fill tube. Thus, it is respectfully submitted that persons skilled in the art would be suggested to replace the injection nozzle 50 of Friedman with the nozzle assembly of Mannara as there is no suggestion that its discharge orifices 33 could be utilized in any other structure than disclosed. Additionally, even if somehow combined, Mannara does not disclose that its orifices 33 (which are contended to correspond to the recited ducts) could be angled. Thus, for each of these separate and independent reasons, Mannara alone or in combination with any other prior art would not suggest the recitations of claim 31 as previously amended.

It is respectfully submitted that the Examiner, relying upon a collection of five references in an attempt to meet the recitations of the claims, basically contends that when "taken as a whole", the prior art could be combined/modified to arrive at the present invention. As set forth in In re Fine, 5 USPQ2d 1596, 1599 (CAFC 1988):

Obviousness is tested by "what the combined teachings of the references would have suggested to those of ordinary skill in the art." (case citation) But it "cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination." (case citation) And "teachings of references can be combined only if there is some suggestion or incentive to do so." (case citation) Here, the prior art contains none. (emphasis theirs)

As it has been clearly shown that the prior art does not provide any suggestion or incentive to combine the various elements in an attempt to meet the recitations of the claims, it is respectfully

Serial No. 09/904,794

submitted that the rejection of the claims based upon the prior art has been overcome. Favorable reconsideration is respectfully requested.

For completeness, the effect of the structural limitations of claim 31 as previously amended is to enhance the irregular and random pattern of the second food ingredient in the food material as set forth at least at page 8, line 27 and following of the specification. The acute angle was positively recited to be related to flow (i.e., upstream) and thus is not necessary to relate it to a "surface". An obtuse angle is formed between the duct and the supply stream "downstream" of the duct. Theoretically, it could be possible to define the ducts in that manner. However, "upstream" does positively recite how the acute angle is determined, which definition is not met by the prior art. Although Examiner Weinstein had no problem with this limitation in the IPER of the corresponding PCT application and in fact relied upon it to show novelty and inventive step, the limitations of claim 31 incorporated into claim 21 have been amended in a manner believed desired by the Examiner. As a conscientious attempt has been made to define the clear distinctions of the present invention over the prior art, it is respectfully requested that the Examiner contact the undersigned for a telephonic or personal interview if the above application is not in condition for allowance.

Claims 32-54 have been added which further define the present invention in a manner to distinguish over the prior art. Thus, it is respectfully submitted that claims 32-54 are allowable for separate and independent reasons.

The Examiner has cited the United States Patents listed in NOTICE OF REFERENCES CITED as G-M of Page 1 of 3, A-M of Page 2 of 3 and A-C of Page 3 of 3 and indicated consideration of the prior art cited by applicants. By the lack of application of these references and others like then within the classes or subclasses searched, the Examiner apparently recognizes the clear patentability of the present invention over any of the references.

Therefore, since the claims of the present application have been shown to include limitations directed to the features of applicants' food products, especially refrigerated yogurt products, and apparatus and methods for their production which are neither shown, described, taught, nor alluded to in any of the references cited by the Examiner and by the applicants, whether those references are taken singly or in any combination, the Examiner is requested to allow claims 21-29 and 32-54 as amended, of the present application and to pass this application to issue.

Serial No. 09/904,794

If the present amendment does not place the above application in condition for allowance, a personal interview with Examiner Weinstein respectfully requested.

Respectfully submitted,

Robert Germick, et al.


Dated: June 30, 2004

By: _____

John A. O'Toole, Esq.
GENERAL MILLS, INC.
P.O. Box 1113
Minneapolis, MN 55440
Tel: (763) 764-2422
Fax: (763) 764-2268

Dated: June 30, 2004

By: _____


Alan D. Kamrath (Reg. No. 28,227)
NIKOLAI & MERSEREAU, P.A.
900 Second Avenue South, Suite 820
Minneapolis, MN 55402
Tel: (612) 392-7306
Fax: (612) 349-6556